

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTHONY SHRONE PERSON,

Petitioner,

v.

MELISSA ANDREWJESKI,

Respondent.

Case No. 3:23-cv-5434-BJR-TLF

ORDER

This matter comes before the Court on petitioner's third motion to appoint counsel (Dkt. 51), second motion to expand the record (Dkt. 52), motion for reconsideration on petitioner's motion to commence criminal proceedings (Dkt. 53), and third motion to compel evidence (Dkt. 57). Respondent has responded to petitioner's motion to expand the record and petitioner's motion to compel. Dkts. 54, 59.

Petitioner's cursive writing style makes it difficult to discern the handwritten portions of his motions. Petitioner is directed to print or type any future filings. The Court has already informed petitioner that his motions are premature because an answer has not yet been filed in this case. See Dkt. 48. After a review of the relevant record it appears that the motions remain premature and are denied.

1. Motion to appoint counsel

The Court previously denied petitioner's motion for an appointment of counsel because an answer had not yet been filed; therefore it was unclear if complex legal or

1 factual issues exist that would potentially warrant appointment of counsel. Dkt. 48; See
2 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). In petitioner's most recent motion
3 he states that Coyote Ridge Correction Center's policy restricts prisoners from keeping
4 their legal documents. Dkt. 51 at 2. While the Court is sympathetic to the difficulties of
5 litigating from prison, this reason does not address the lack of complex legal or factual
6 issues or the fact that an answer has not yet been filed; therefore this motion is
7 DENIED.

8 **2. Motion to expand the record**

9 Petitioner requests the Court to expand the record to include CIV-23-695-HE, a
10 case that is apparently currently pending in the U.S. District Court for the Western
11 District of Oklahoma. Dkt. 52 at 2. Respondent opposes the motion as premature. Dkt.
12 54. Because the answer has not yet been filed, it is not clear whether the information
13 petitioner seeks to add to the record will be necessary. Therefore the motion is DENIED
14 as premature.

15 **3. Reconsideration on motion to commence criminal proceedings**

16 Petitioner requests the Court to reconsider its order denying petitioner's motion to
17 commence criminal proceedings as premature and appears to request the Court to
18 "stay and abey" this motion and petitioner's motion to compel until an answer has been
19 filed, on October 6, 2023. Dkt. 53 at 1-2. Additionally, petitioner requests a designation
20 of record of case number 1:23-cv-856, a case that is apparently pending in the United
21 States District Court for the Western District of Michigan. *Id.* at 2. A private citizen lacks
22 authority to initiate a prosecution, which can only be initiated in federal court by a United
23 States Attorney. *Rhodes v. Robinson*, 399 F.App'x 160, 165 (9th Cir. 2010) (citing
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1 *Keenan v. McGrath*, 328 F.2d 610, 611 (1st Cir. 1964)). Therefore, petitioner's motion is
2 DENIED.

3 **4. Motion to compel evidence**

4 Petitioner lists twelve entities that he requests the Court to compel evidence
5 from. Dkt. 57 at 3-5. Respondent argues that petitioner has not shown good cause for
6 discovery. Dkt. 59.

7 "[T]here is no general right to discovery in habeas proceedings." *Rich v.*
8 *Calderon*, 187 F.3d 1064, 1068 (9th Cir. 1999). A judge may authorize discovery with a
9 showing of good cause. *Id.*; Rules Governing Section 2254 Cases, Rule 6(a), 28 U.S.C.
10 foll. § 2254. To show good cause, the petitioner must set forth specific facts showing
11 that discovery is appropriate. *Deputy v. Taylor*, 19 F.3d 1485, 1493 (3rd Cir. 1994)
12 (citing *Mayberry v. Petsock*, 821 F.2d 179, 185 (3rd Cir. 1987))

13 Petitioner has not shown good cause and his motion is at best premature as
14 respondent has not yet filed an answer in this case. Furthermore, before filing a motion
15 to compel discovery, Fed. R. Civ. P. 37 and LCR 37(a)(1) require the moving party to
16 meet and confer with the party failing to make disclosure or discovery in an effort to
17 resolve the dispute without court action. The meeting must be either face-to-face or via
18 telephone. LCR 37(a)(1).

19 Therefore, petitioner's motion is DENIED for failure to show good cause.

20 **CONCLUSION**

21 Petitioner's motions are DENIED, for the reasons stated above. Petitioner
22 continues to file numerous motions in this case; the Court has informed him on
23 numerous occasions that it will not be able to consider these motions until an answer
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1 has been filed and the Court is able to determine the legal and factual issues involved
2 and determine whether an evidentiary hearing is required, or any necessary evidence is
3 missing from the record. As such, petitioner should refrain from filing unnecessary,
4 unwarranted, repetitive, or premature motions.

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7 Dated this 20th day of September, 2023.

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11 Theresa L. Fricke
12 United States Magistrate Judge
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